IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11530 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

BHAGAJI LALAJI THAKORE - Respondent(s)

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Appearance :

GOVERNMENT PLEADER for Petitioner No(s).: 1.

MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 25/07/2005

CAV **JUDGMENT**

1.By filing this petition under Article 226 and 227 of the Constitution of India, the petitioner has prayed to quash and set aside the order dated 30.03.2000 passed by the Labour Court, Ahmedabad in Reference

(LCA) No.1146/89, by which the Labour Court has partly allowed the Reference and directed the petitioner to reinstate the respondent with continuity of service.

2. It appears from the record that it is stated by the respondent workman in the statement of claim that he was working with the petitioner from 27.07.1987 in P.W.D. department as a Labourer and that he has completed more than 240 days and his services were orally terminated from 21.02.1989. It is further stated that before his termination, no notice, salary or departmental inquiry was conducted. Being aggrieved by the said action, the respondent workman raised the industrial dispute being Reference No. (LCA) 1146 of 1989. The Labour Court, after appreciating the evidence on record and having heard the learned advocates for the parties, came to the conclusion that the respondent workman has worked for 240 days and the action of the petitioner terminating the respondent workman is illegal in view of the fact that muster roll is not produced by the petitioner in support of its contention that the respondent workman has not completed 240 days . Ultimately, the Labour Court, by its award dated 30.03.2000 partly allowed the reference and directed

the petitioner to reinstate the respondent workman in service with continuity of service and without back wages.

3. Heard the learned advocates for the parties.

4. It is submitted by the learned A.G.P., that the petitioner is not an industry and, therefore, provisions of the Industrial Disputes Act are not applicable to the petitioner. In support of his contention, he has relied upon the judgment reported in 2001 GLH 482. It is further submitted that the respondent – workman was working as rojamdar and, therefore, in view of the decision reported in AIR 1997 SC 3656, the provisions of retrenchment cannot be made applicable to the rojamdar. It is submitted that the respondent workman has not worked beyond 200 days in one year. It is further submitted that no court can issue direction either reinstating or reengaging the rojamdar workman because such direction can be issued only against regular vacant post. In support of his contention, he has relied upon the judgment reported in AIR 1996 SC 1565. It is, therefore, requested to quash and set aside the impugned judgment and award passed by the Labour Court.

5. On the other hand, Mr.M.H.Rathod, learned advocate

appearing on behalf of the respondent – workman has vehemently submitted that the petitioner has not raised any contention regarding “industry” before the Labour Court and for the first time the said contention has been raised before this Court which is not required to be accepted by this Court in writ petition under Article 226 and 227 of the Constitution of India. He submitted that the respondent – workman was working as a daily wager from 27.07.1987 to 21.02.1989 with the petitioner and this fact is undisputed and the same is admitted by the petitioner before the Labour Court. He submitted that the respondent – workman has completed 240 days in the service and this important aspect has been observed by the Labour Court in its award and in this view of the matter, the provisions of Section 25(F) are applicable and required to be followed in the instant case before terminating the services of the respondent workman. He further submitted that the petitioner has not produced any documentary evidence before the Labour Court in support of its case and, therefore, the Labour Court has rightly drawn adverse inference in favour of the respondent – workman. In support of his contention, he has relied upon the decision reported in 2005(1)

GLH 340. Relying upon the decision reported in 2005 SCC (L & S) 183, Mr.Rathod submitted that when the petitioner has not produced the record which is in possession of the petitioner before the Labour Court, then the evidence of the workman is true which has been believed by the Labour Court by granting reinstatement to the workman. He submitted that the petitioner has not followed the requirement of Rule 18 of the Industrial Disputes (Gujarat) Rules, 1966 and, therefore, the order of termination is ab initio void and it is required to be quashed and set aside.

6. It is not in dispute that the respondent workman was working with the petitioner from 27.07.1987 and his services were terminated on 21.09.1989. This fact has remained undisputed before the Labour Court. It is observed by the Labour Court in its judgment and award that the respondent – workman has completed 240 days in the service. It is also observed by the Labour Court that the provisions of Section 25(F) of the Act have not been followed by the petitioner before terminating the services of the respondent and has drawn adverse inference in favour of the respondent workman. It is also observed by the Labour Court that the petitioner employer has failed

to produce the documentary evidence which are in their possession in support of their case.

7. Having heard the learned advocates for the parties and perusing the material placed on record, it appears that the petitioner, for the first time, has raised the contention that the petitioner is not an industry as defined under Section 2(J) of the Act. In support of this contention, the petitioner has relied upon the decision reported in 2000(1) GLH 482, wherein this Court in para 18 has observed as under :

> “It is required to be noted that the Irrigation Department cannot be said to be an “industry” within the meaning of the definition under the Industrial Disputes Act (See 1997 AIR SCW 2627 – Executive Engineer (State of Karnataka) V.K.Somasetty), [(1995 Supp (4) SCC 672 Union of India Vs. Jai Narayan Singh) and (1996) 2 JT SC 455 – State of H.P. Vs. Suresh Kumar Verma] which are referred in the aforesaid case of K.Somasetty. The Apex Court in the case of K.Somasetty (supra) pointed out that :
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> > “The function of public welfare of the State is a sovereign function. It is the constitutional mandate under the Directive

Principles that the Government should bring about welfare State by all executives and legislative actions. Under these circumstances, the State is not an `Industry' under the Industrial Disputes Act. Even otherwise, since the Project has been closed, the respondent has no right to the post since he had been appointed on daily wages."

8. On the other hand, Mr.Rathod has relied upon the decision rendered in Special Civil Application No. 6697 of 2001 and allied matters, wherein this Court (Coram : K.S.Jhaveri, J) has observed in para 3.1 as under :

"3.1. In the context of the aforesaid contention, Mr.Rathod learned advocate appearing for the respondent – workmen has relied upon the decision of the Full Bench of this Court in the case of Gujarat Forest Producers, Gatherers & Forest Workers Union V. State of Gujarat reported in 2004(2) G.L.H. 302, wherein, this Court has held as under :

"28.6. We, therefore, answer the part of question no. 1 relating to the Irrigation Department of the questions referred in

Special Civil Application No. 4715 of 2003 and 4435 of 2001, by holding that the activity of irrigation and canal works undertaken by the Narmada Water Resources and Water Supply Department is an “industry”. As regards the questions nos. 2 and 6 referred in the said matter, we hold that the decision of the Division Bench in P.W.D. Employees Union V/s State of Gujarat reported in 28(2) GLR 1970, which is confirmed by the Supreme Court by a three Judge bench Judgment in the decision in State of Gujarat V/s P.W.D. Employees Union, reported in (2002) 10 SCC 147, holding that the Irrigation Department of the P.W.D. , is an “industry” under Section 2 (j) of the Industrial Disputes Act, 1947, lays down the correct law and the decision in S.C.Thakor V/s State of Gujarat reported in (2000) 1 GLH 482 and State of Gujarat V/s D.B.Thakor, reported in (2003) 2 GLH 40, to the extent they hold to the contrary, do not lay down correct law and are, therefore, overruled. In view of the above discussion, the decision of the

learned Single Judge in State of Gujarat V/s Maniben reported in (2003) 2 GLH 368 has correctly followed the decision of the Division Bench of this Court in P.W.D. Employees Union V/s State of Gujarat, reported in 28(2) GLR 1070 and in the decision of the Supreme Court in Des Raj (Supra) reported in AIR 1988 Sc 1182, for holding in paragraph 44 of the judgment that the Irrigation Department of the State is an “Industry”. The question no. 4 is answered accordingly.”

9. Considering the facts of the case and the judgments referred to above, the contention of the petitioner that Irrigation Department of the Government is not an industry does not survive.

10. So far as the next contention of the petitioner that Section 25(F) is not applicable to the facts of the present case is concerned, it is required to be noted that the respondent – workman was working with the petitioner from 27.07.1987 and his services were terminated on 21.09.1989. Therefore, the fact that the respondent – workman has completed 240 days in the service has been proved before the Labour Court, retrenchment procedure as provided in Section 25(F)

of the Act is required to be followed, which has not been done in the present case. The ratio laid down in the judgment reported in AIR 1997 SC 3657 is not helpful to the petitioner in view of the peculiar facts of the present case. At this stage, reference is required to be made to the decision of this Court reported in 2005(2) GLH 62, the head-note of which reads as under.:

> “Industrial Disputes Act, 1947 – Ss. 25(B), 25-F, 25-H, Workman completed 240 days service in one year – Mandatory procedure laid down for retrenchment not followed while terminating his services – Principle of “Last Come, First go” not followed – Petitioner – Board did not prove that the workman was employed for a particular work / project – Name of the project / work nor even disclosed before the Labour Court – The Court, while dismissing the petition under Arts. 226 and 227, held, cannot reappreciate the evidence – Petition dismissed.”

11. It is also required to be noted that the petitioner has not followed the requirement of Rule 81 of the Industrial Disputes (Gujarat) Rules, 1966 which reads as under.:

> “The employer shall, prepare a list of all

workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in the category and cause a copy thereof, to be posted on a Notice Board in conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment."

12. Upon perusal of Rule 81 as aforesaid, it clearly reveals that such mandatory provisions are required to be followed by the employer and failure to do so, the order of termination is ab initio void and the same is required to be quashed and set aside.

13. In the result, this petition fails and the same is required to be dismissed and is dismissed accordingly. Rule discharged. Interim relief, if any, stands vacated forthwith.

(SHARAD D DAVE, J)

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